

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION**
3:07CV35-3-V
3:98CR78-1-V

MICHAEL TIMOTHY SMITH,)
)
Petitioner,)
v.)
)
UNITED STATES OF AMERICA,)
)
)
Respondent.)

ORDER

THIS MATTER comes before the Court upon the Petitioner's Motion to Vacate, Set Aside, or Correct Sentence, filed January 25, 2007.

The Petitioner has filed a previous Motion to Vacate (case no. 3:01cv385-V) which was denied as time barred (Document No. 2.) Under the Antiterrorism and Effective Death Penalty Act (AEDPA), "a second or successive motion must be certified . . . by a panel of the appropriate court of appeals . . ." 28 U.S.C. § 2255 (1997). Therefore, the Petitioner must first certify his claim with the Fourth Circuit Court of Appeals before he can file his successive claim in the District Court.

THEREFORE, IT IS HEREBY ORDERED that Petitioner's Motion to Vacate, Set Aside or Correct Sentence is **DISMISSED** without prejudice as successive.

SO ORDERED.

Signed: February 5, 2007



Richard L. Voorhees
United States District Judge

